

67-19-1. Short title.

This chapter shall be known and may be cited as the "Utah State Personnel Management Act."

Enacted by Chapter 139, 1979 General Session

67-19-3. Definitions.

As used in this chapter:

- (1) "Agency" means any department or unit of Utah state government with authority to employ personnel.
- (2) "Career service" means positions under schedule B as defined in Section 67-19-15.
- (3) "Career service employee" means an employee who has successfully completed a probationary period of service in a position covered by the career service.
- (4) "Career service status" means status granted to employees who successfully complete probationary periods for competitive career service positions.
- (5) "Classified service" means those positions subject to the classification and compensation provisions of Section 67-19-12.
- (6) "Controlled substance" means controlled substance as defined in Section 58-37-2.
- (7) (a) "Demotion" means a disciplinary action resulting in a reduction of an employee's current actual wage.
(b) "Demotion" does not mean:
 - (i) a nondisciplinary movement of an employee to another position without a reduction in the current actual wage; or
 - (ii) a reclassification of an employee's position under the provisions of Subsection 67-19-12(3) and rules made by the department.
- (8) "Department" means the Department of Human Resource Management.
- (9) "Disability" means a physical or mental disability as defined and protected under the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq.
- (10) "Employee" means any individual in a paid status covered by the career service or classified service provisions of this chapter.
- (11) "Examining instruments" means written or other types of proficiency tests.
- (12) "Executive director," except where otherwise specified, means the executive director of the Department of Human Resource Management.
- (13) "Human resource function" means those duties and responsibilities specified:
 - (a) under Section 67-19-6;
 - (b) under rules of the department; and
 - (c) under other state or federal statute.
- (14) "Market comparability adjustment" means a salary range adjustment determined necessary through a market survey of salary ranges of a reasonable cross section of comparable benchmark positions in private and public employment.
- (15) "Probationary employee" means an employee serving a probationary period in a career service position but who does not have career service status.
- (16) "Probationary period" means that period of time determined by the

department that an employee serves in a career service position as part of the hiring process before career service status is granted to the employee.

(17) "Probationary status" means the status of an employee between the employee's hiring and the granting of career service status.

(18) "Temporary employee" means career service exempt employees described in Subsection 67-19-15(1)(p).

(19) "Total compensation" means salaries and wages, bonuses, paid leave, group insurance plans, retirement, and all other benefits offered to state employees as inducements to work for the state.

Amended by Chapter 109, 2013 General Session

67-19-3.1. Principles guiding interpretation of chapter and adoption of rules.

(1) The department shall establish a career service system designed in a manner that will provide for the effective implementation of the following merit principles:

(a) recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment;

(b) providing for equitable and competitive compensation;

(c) training employees as needed to assure high-quality performance;

(d) retaining employees on the basis of the adequacy of their performance and separating employees whose inadequate performance cannot be corrected;

(e) fair treatment of applicants and employees in all aspects of human resource administration without regard to race, color, religion, sex, national origin, political affiliation, age, or disability, and with proper regard for their privacy and constitutional rights as citizens;

(f) providing information to employees regarding their political rights and the prohibited practices under the Hatch Act; and

(g) providing a formal procedure for advancing grievances of employees:

(i) without discrimination, coercion, restraint, or reprisal; and

(ii) in a manner that is fair, expeditious, and inexpensive for the employee and the agency.

(2) The principles in Subsection (1) shall govern interpretation and implementation of this chapter.

Amended by Chapter 249, 2010 General Session

67-19-4. Discriminatory or prohibited employment practices.

The state, its officers, and employees shall be governed by the provisions of Section 34A-5-106 of the Utah Antidiscrimination Act concerning discriminatory or prohibited employment practices.

Amended by Chapter 65, 2003 General Session

**67-19-5. Department of Human Resource Management created --
Executive director -- Compensation -- Staff.**

- (1) There is created the Department of Human Resource Management.
- (2) (a) The department shall be administered by an executive director appointed by the governor with the consent of the Senate.
(b) The executive director shall be a person with experience in human resource management and shall be accountable to the governor for the executive director's performance in office.
- (3) The executive director may:
 - (a) appoint a personal secretary and a deputy director, both of whom shall be exempt from career service; and
 - (b) appoint division directors and program managers who may be career service exempt.
- (4) (a) The executive director shall have full responsibility and accountability for the administration of the statewide human resource management system.
(b) Except as provided in Section 67-19-6.1, an agency may not perform human resource functions without the consent of the executive director.
- (5) Statewide human resource management rules adopted by the Department of Human Resource Management in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall take precedence if there is a conflict with agency rules, policies, or practices.
- (6) The department may operate as an internal service fund agency in accordance with Section 63J-1-410 for the human resource functions the department provides.

Amended by Chapter 183, 2009 General Session

67-19-6. Responsibilities of the executive director.

- (1) The executive director shall:
 - (a) develop, implement, and administer a statewide program of human resource management that will:
 - (i) aid in the efficient execution of public policy;
 - (ii) foster careers in public service for qualified employees; and
 - (iii) render assistance to state agencies in performing their missions;
 - (b) design and administer the state pay plan;
 - (c) design and administer the state classification system and procedures for determining schedule assignments;
 - (d) design and administer the state recruitment and selection system;
 - (e) administer agency human resource practices and ensure compliance with federal law, state law, and state human resource rules, including equal employment opportunity;
 - (f) consult with agencies on decisions concerning employee corrective action and discipline;
 - (g) maintain central personnel records;
 - (h) perform those functions necessary to implement this chapter unless otherwise assigned or prohibited;

- (i) perform duties assigned by the governor or statute;
 - (j) adopt rules for human resource management according to the procedures of Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
 - (k) establish and maintain a management information system that will furnish the governor, the Legislature, and agencies with current information on authorized positions, payroll, and related matters concerning state human resources;
 - (l) conduct research and planning activities to:
 - (i) determine and prepare for future state human resource needs;
 - (ii) develop methods for improving public human resource management; and
 - (iii) propose needed policy changes to the governor;
 - (m) study the character, causes, and extent of discrimination in state employment and develop plans for its elimination through programs consistent with federal and state laws governing equal employment opportunity in employment;
 - (n) when requested by counties, municipalities, and other political subdivisions of the state, provide technical service and advice on human resource management at a charge determined by the executive director;
 - (o) establish compensation policies and procedures for early voluntary retirement;
 - (p) confer with the heads of other agencies about human resource policies and procedures;
 - (q) submit an annual report to the governor and the Legislature; and
 - (r) assist with the development of a vacant position report required under Subsection 63J-1-201(2)(b)(v).
- (2) (a) After consultation with the governor and the heads of other agencies, the executive director shall establish and coordinate statewide training programs, including and subject to available funding, the development of manager and supervisor training.
- (b) The programs developed under this Subsection (2) shall have application to more than one agency.
- (c) The department may not establish training programs that train employees to perform highly specialized or technical jobs and tasks.
- (3) (a) (i) The department may collect fees for training as authorized by this Subsection (3).
- (ii) Training funded from General Fund appropriations shall be treated as a separate program within the department budget.
- (iii) All money received from fees under this section will be accounted for by the department as a separate user driven training program.
- (iv) The user training program includes the costs of developing, procuring, and presenting training and development programs, and other associated costs for these programs.
- (b) (i) Funds remaining at the end of the fiscal year in the user training program are nonlapsing.
- (ii) Each year, as part of the appropriations process, the Legislature shall review the amount of nonlapsing funds remaining at the end of the fiscal year and may, by statute, require the department to lapse a portion of the funds.

Amended by Chapter 173, 2012 General Session

67-19-6.1. Department field offices.

(1) The executive director of the Department of Human Resource Management may establish a field office in an agency.

(2) The executive director may assign an employee of the department to act as field office staff.

(3) The executive director and agency head shall sign an agreement, to be reviewed annually, that specifies:

- (a) the services to be provided by the department;
 - (b) the use of agency facilities and equipment by the field office;
 - (c) protocols to resolve discrepancies between agency practice and Department of Human Resource Management policy; and
 - (d) any other issue necessary for the proper functioning of the field office.
- (4) Unless otherwise provided for in the field office agreement, the agency shall:
- (a) assign responsibilities and duties to its employees;
 - (b) conduct performance appraisals;
 - (c) discipline its employees in consultation with the department; and
 - (d) maintain individual personnel records.

Amended by Chapter 249, 2010 General Session

67-19-6.3. Equal employment opportunity plan.

(1) In conjunction with the director's duties under Section 67-19-6, and notwithstanding the general prohibition in Subsection 34A-5-106(3)(c), the executive director shall prepare an equal employment opportunity plan for state employment consistent with the guidelines provided in federal equal employment opportunity laws and in related federal regulations.

(2) The equal employment opportunity plan required by this section applies only to state career service employees described in Section 67-19-15.

(3) The Legislature shall review the equal employment opportunity plan required by this section before it may be implemented.

(4) Nothing in this section requires the establishment of hiring quotas or preferential treatment of any identifiable group.

Amended by Chapter 139, 2006 General Session

67-19-6.7. Overtime policies for state employees.

(1) As used in this section:

(a) "Accrued overtime hours" means:

(i) for nonexempt employees, overtime hours earned during a fiscal year that, at the end of the fiscal year, have not been paid and have not been taken as time off by the nonexempt state employee who accrued them; and

(ii) for exempt employees, overtime hours earned during an overtime year.

(b) "Appointed official" means:

(i) each department executive director and deputy director, each division director, and each member of a board or commission; and

(ii) any other person employed by a department who is appointed by, or whose

appointment is required by law to be approved by, the governor and who:

(A) is paid a salary by the state; and

(B) who exercises managerial, policy-making, or advisory responsibility.

(c) "Department" means the Department of Administrative Services, the Department of Corrections, the Department of Financial Institutions, the Department of Alcoholic Beverage Control, the Insurance Department, the Public Service Commission, the Labor Commission, the Department of Agriculture and Food, the Department of Human Services, the State Board of Education, the Department of Natural Resources, the Department of Technology Services, the Department of Transportation, the Department of Commerce, the Department of Workforce Services, the State Tax Commission, the Department of Heritage and Arts, the Department of Health, the National Guard, the Department of Environmental Quality, the Department of Public Safety, the Department of Human Resource Management, the Commission on Criminal and Juvenile Justice, all merit employees except attorneys in the Office of the Attorney General, merit employees in the Office of the State Treasurer, merit employees in the Office of the State Auditor, Department of Veterans' and Military Affairs, and the Board of Pardons and Parole.

(d) "Elected official" means any person who is an employee of the state because the person was elected by the registered voters of Utah to a position in state government.

(e) "Exempt employee" means a state employee who is exempt as defined by the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.

(f) "FLSA" means the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.

(g) "FLSA agreement" means the agreement authorized by the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq., by which a nonexempt employee elects the form of compensation the nonexempt employee will receive for overtime.

(h) "Nonexempt employee" means a state employee who is nonexempt as defined by the Department of Human Resource Management applying FLSA requirements.

(i) "Overtime" means actual time worked in excess of the employee's defined work period.

(j) "Overtime year" means the year determined by a department under Subsection (4)(b) at the end of which an exempt employee's accrued overtime lapses.

(k) "State employee" means every person employed by a department who is not:

(i) an appointed official;

(ii) an elected official;

(iii) a member of a board or commission who is paid only for per diem or travel expenses; or

(iv) employed on a contractual basis at the State Office of Education.

(l) "Uniform annual date" means the date when an exempt employee's accrued overtime lapses.

(m) "Work period" means:

(i) for all nonexempt employees, except law enforcement and hospital employees, a consecutive seven day 24 hour work period of 40 hours;

(ii) for all exempt employees, a 14 day, 80 hour payroll cycle; and
(iii) for nonexempt law enforcement and hospital employees, the period established by each department by rule for those employees according to the requirements of the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.

(2) Each department shall compensate each state employee who works overtime by complying with the requirements of this section.

(3) (a) Each department shall negotiate and obtain a signed FLSA agreement from each nonexempt employee.

(b) In the FLSA agreement, the nonexempt employee shall elect either to be compensated for overtime by:

(i) taking time off work at the rate of one and one-half hour off for each overtime hour worked; or

(ii) being paid for the overtime worked at the rate of one and one-half times the rate per hour that the state employee receives for nonovertime work.

(c) Any nonexempt employee who elects to take time off under this Subsection (3) shall be paid for any overtime worked in excess of the cap established by the Department of Human Resource Management.

(d) Before working any overtime, each nonexempt employee shall obtain authorization to work overtime from the employee's immediate supervisor.

(e) Each department shall:

(i) for employees who elect to be compensated with time off for overtime, allow overtime earned during a fiscal year to be accumulated; and

(ii) for employees who elect to be paid for overtime worked, pay them for overtime worked in the paycheck for the pay period in which the employee worked the overtime.

(f) If the department pays a nonexempt employee for overtime, the department shall charge that payment to the department's budget.

(g) At the end of each fiscal year, the Division of Finance shall total all the accrued overtime hours for nonexempt employees and charge that total against the appropriate fund or subfund.

(4) (a) (i) Except as provided in Subsection (4)(a)(ii), each department shall compensate exempt employees who work overtime by granting them time off at the rate of one hour off for each hour of overtime worked.

(ii) The executive director of the Department of Human Resource Management may grant limited exceptions to this requirement, where work circumstances dictate, by authorizing a department to pay employees for overtime worked at the rate per hour that the employee receives for nonovertime work, if the department has funds available.

(b) (i) Each department shall:

(A) establish in its written human resource policies a uniform annual date for each division that is at the end of any pay period; and

(B) communicate the uniform annual date to its employees.

(ii) If any department fails to establish a uniform annual date as required by this Subsection (4), the executive director of the Department of Human Resource Management, in conjunction with the director of the Division of Finance, shall establish the date for that department.

(c) (i) Any overtime earned under this Subsection (4) is not an entitlement, is not

a benefit, and is not a vested right.

(ii) A court may not construe the overtime for exempt employees authorized by this Subsection (4) as an entitlement, a benefit, or as a vested right.

(d) At the end of the overtime year, upon transfer to another department at any time, and upon termination, retirement, or other situations where the employee will not return to work before the end of the overtime year:

(i) any of an exempt employee's overtime that is more than the maximum established by the Department of Human Resource Management rule lapses; and

(ii) unless authorized by the executive director of the Department of Human Resource Management under Subsection (4)(a)(ii), a department may not compensate the exempt employee for that lapsed overtime by paying the employee for the overtime or by granting the employee time off for the lapsed overtime.

(e) Before working any overtime, each exempt employee shall obtain authorization to work overtime from the exempt employee's immediate supervisor.

(f) If the department pays an exempt employee for overtime under authorization from the executive director of the Department of Human Resource Management, the department shall charge that payment to the department's budget in the pay period earned.

(5) The Department of Human Resource Management shall:

(a) ensure that the provisions of the FLSA and this section are implemented throughout state government;

(b) determine, for each state employee, whether that employee is exempt, nonexempt, law enforcement, or has some other status under the FLSA;

(c) in coordination with modifications to the systems operated by the Division of Finance, make rules:

(i) establishing procedures for recording overtime worked that comply with FLSA requirements;

(ii) establishing requirements governing overtime worked while traveling and procedures for recording that overtime that comply with FLSA requirements;

(iii) establishing requirements governing overtime worked if the employee is "on call" and procedures for recording that overtime that comply with FLSA requirements;

(iv) establishing requirements governing overtime worked while an employee is being trained and procedures for recording that overtime that comply with FLSA requirements;

(v) subject to the FLSA, establishing the maximum number of hours that a nonexempt employee may accrue before a department is required to pay the employee for the overtime worked;

(vi) subject to the FLSA, establishing the maximum number of overtime hours for an exempt employee that do not lapse; and

(vii) establishing procedures for adjudicating appeals of any FLSA determinations made by the Department of Human Resource Management as required by this section;

(d) monitor departments for compliance with the FLSA; and

(e) recommend to the Legislature and the governor any statutory changes necessary because of federal government action.

(6) In coordination with the procedures for recording overtime worked

established in rule by the Department of Human Resource Management, the Division of Finance shall modify its payroll and human resource systems to accommodate those procedures.

(a) Notwithstanding the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, Section 67-19-31, and Section 67-19a-301, any employee who is aggrieved by the FLSA designation made by the Department of Human Resource Management as required by this section may appeal that determination to the executive director of the Department of Human Resource Management by following the procedures and requirements established in Department of Human Resource Management rule.

(b) Upon receipt of an appeal under this section, the executive director shall notify the executive director of the employee's department that the appeal has been filed.

(c) If the employee is aggrieved by the decision of the executive director of the Department of Human Resource Management, the employee shall appeal that determination to the Department of Labor, Wage and Hour Division, according to the procedures and requirements of federal law.

Amended by Chapter 214, 2013 General Session

67-19-11. Use of department facilities -- Field office facilities cost allocation -- Funding for department.

(1) (a) All officers and employees of the state and its political subdivisions shall allow the department to use public buildings under their control, and furnish heat, light, and furniture, for any examination, training, hearing, or investigation authorized by this chapter.

(b) The cost of the department's use of facilities shall be paid by the agency housing a field office staff.

(2) The executive director shall:

(a) prepare an annual budget request for the department;

(b) submit the budget request to the governor and the Legislature; and

(c) before charging a fee for services provided by the department's internal service fund to an executive branch agency, the executive director shall:

(i) submit the proposed rates, fees, and cost analysis to the Rate Committee established under Subsection (3); and

(ii) obtain the approval of the Legislature as required under Section 63J-1-410.

(3) (a) There is created a Rate Committee which shall consist of:

(i) the executive director of the Governor's Office of Management and Budget, or a designee;

(ii) the executive directors of three state agencies that use services and pay rates to one of the department internal service funds, or their designee, appointed by the governor for a two-year term;

(iii) the director of the Division of Finance, or a designee;

(iv) the executive director of the Department of Human Resource Management, or a designee; and

(v) the attorney general or designee.

(b) (i) The committee shall elect a chair from its members, except that the chair may not be from an agency that receives payment of a rate set by the committee.

(ii) Members of the committee who are state government employees and who do not receive salary, per diem, or expenses from their agency for their service on the committee shall receive no compensation, benefits, per diem, or expenses for the members' service on the committee.

(c) The Department of Human Resource Management shall provide staff services to the committee.

(4) (a) The department shall submit to the committee a proposed rate and fee schedule for:

(i) human resource management services rendered; and

(ii) costs incurred by the Office of the Attorney General in defending the state in a grievance under review by the Career Service Review Office.

(b) The committee shall:

(i) conduct meetings in accordance with Title 52, Chapter 4, Open and Public Meetings Act;

(ii) review the proposed rate and fee schedules and may approve, increase, or decrease the rate and fee;

(iii) recommend a proposed rate and fee schedule for the internal service fund to:

(A) the Governor's Office of Management and Budget; and

(B) the legislative appropriations subcommittees that, in accordance with Section 63J-1-410, approve the internal service fund rates, fees, and budget; and

(iv) review and approve, increase or decrease an interim rate, fee, or amount when the department begins a new service or introduces a new product between annual general sessions of the Legislature.

(c) The committee may in accordance with Subsection 63J-1-410(4) decrease a rate, fee, or amount that has been approved by the Legislature.

Amended by Chapter 310, 2013 General Session

67-19-12. State pay plans -- Applicability of section -- Exemptions -- Duties of the executive director.

(1) (a) This section, and the rules adopted by the department to implement this section, apply to each career and noncareer employee not specifically exempted under Subsection (2).

(b) If not exempted under Subsection (2), an employee is considered to be in classified service.

(2) The following employees are exempt from this section:

(a) members of the Legislature and legislative employees;

(b) members of the judiciary and judicial employees;

(c) elected members of the executive branch and employees under schedule AC as provided under Subsection 67-19-15(1)(c);

(d) employees of the State Board of Education who are licensed by the State Board of Education;

(e) officers, faculty, and other employees of state institutions of higher

education;

(f) employees in a position that is specified by statute to be exempt from this Subsection (2);

(g) employees in the Office of the Attorney General;

(h) department heads and other persons appointed by the governor under statute;

(i) exempt employees as provided under Subsection 67-19-15(1)(l);

(j) employees of the Utah Schools for the Deaf and the Blind who are:

(i) educators as defined by Section 53A-25b-102; or

(ii) educational interpreters as classified by the department; and

(k) temporary employees described in Subsection 67-19-15(1)(p).

(3) (a) The executive director shall prepare, maintain, and revise a position classification plan for each employee position not exempted under Subsection (2) to provide equal pay for equal work.

(b) Classification of positions shall be based upon similarity of duties performed and responsibilities assumed, so that the same job requirements and the same salary range may be applied equitably to each position in the same class.

(c) The executive director shall allocate or reallocate the position of each employee in classified service to one of the classes in the classification plan.

(d) (i) The department shall conduct periodic studies and desk audits to provide that the classification plan remains reasonably current and reflects the duties and responsibilities assigned to and performed by employees.

(ii) The executive director shall determine the schedule for studies and desk audits after considering factors such as changes in duties and responsibilities of positions or agency reorganizations.

(4) (a) With the approval of the governor, the executive director shall develop and adopt pay plans for each position in classified service.

(b) The executive director shall design each pay plan to achieve, to the degree that funds permit, comparability of state salary ranges to salary ranges used by private enterprise and other public employment for similar work.

(c) The executive director shall adhere to the following in developing each pay plan:

(i) Each pay plan shall consist of sufficient salary ranges to permit adequate salary differential among the various classes of positions in the classification plan.

(ii) (A) The executive director shall assign each class of positions in the classification plan to a salary range and shall set the width of the salary range to reflect the normal growth and productivity potential of employees in that class.

(B) The width of the ranges need not be uniform for all classes of positions in the plan.

(iii) (A) The executive director shall issue rules for the administration of pay plans.

(B) The executive director shall issue rules providing for salary adjustments.

(iv) Merit increases shall be granted, on a uniform and consistent basis in accordance with appropriations made by the Legislature, to employees who receive a rating of "successful" or higher in an annual evaluation of their productivity and performance.

(v) By October 31 of each year, the executive director shall submit market comparability adjustments to the executive director of the Governor's Office of Management and Budget for consideration to be included as part of the affected agency's base budgets.

(vi) By October 31 of each year, the executive director shall recommend a compensation package to the governor.

(vii) (A) Adjustments shall incorporate the results of a total compensation market survey of salary ranges and benefits of a reasonable cross section of comparable benchmark positions in private and public employment in the state.

(B) The survey may also study comparable unusual positions requiring recruitment in other states.

(C) The executive director may cooperate with other public and private employers in conducting the survey.

(viii) (A) The executive director shall establish criteria to assure the adequacy and accuracy of the survey and shall use methods and techniques similar to and consistent with those used in private sector surveys.

(B) Except as provided under Sections 67-19-12.1 and 67-19-12.3, the survey shall include a reasonable cross section of employers.

(C) The executive director may cooperate with or participate in any survey conducted by other public and private employers.

(D) The executive director shall obtain information for the purpose of constructing the survey from the Division of Workforce Information and Payment Services and shall include employer name, number of persons employed by the employer, employer contact information and job titles, county code, and salary if available.

(E) The department shall acquire and protect the needed records in compliance with the provisions of Section 35A-4-312.

(ix) The establishing of a salary range is a nondelegable activity and is not appealable under the grievance procedures of Sections 67-19-30 through 67-19-32, Chapter 19a, Grievance Procedures, or otherwise.

(x) The governor shall:

(A) consider salary adjustments recommended under Subsection (4)(c)(vi) in preparing the executive budget and shall recommend the method of distributing the adjustments;

(B) submit compensation recommendations to the Legislature; and

(C) support the recommendation with schedules indicating the cost to individual departments and the source of funds.

(xi) If funding is approved by the Legislature in a general appropriations act, the adjustments take effect on the July 1 following the enactment.

(5) (a) The executive director shall issue rules for the granting of incentive awards, including awards for cost saving actions, awards for commendable actions by an employee, or a market-based award to attract or retain employees.

(b) An agency may not grant a market-based award unless the award is previously approved by the department.

(c) In accordance with Subsection (5)(b), an agency requesting the department's approval of a market-based award shall submit a request and documentation, subject to

Subsection (5)(d), to the department.

(d) In the documentation required in Subsection (5)(c), the requesting agency shall identify for the department:

- (i) any benefit the market-based award would provide for the agency, including:
 - (A) budgetary advantages; or
 - (B) recruitment advantages;
- (ii) a mission critical need to attract or retain unique or hard to find skills in the market; or
- (iii) any other advantage the agency would gain through the utilization of a market-based award.

(6) (a) The executive director shall regularly evaluate the total compensation program of state employees in the classified service.

(b) The department shall determine if employee benefits are comparable to those offered by other private and public employers using information from:

- (i) the most recent edition of the Employee Benefits Survey Data conducted by the U.S. Chamber of Commerce Research Center; or
- (ii) the most recent edition of a nationally recognized benefits survey.

(7) (a) The executive director shall submit proposals for a state employee compensation plan to the governor by October 31 of each year, setting forth findings and recommendations affecting employee compensation.

(b) The governor shall consider the executive director's proposals in preparing budget recommendations for the Legislature.

(c) The governor's budget proposals to the Legislature shall include a specific recommendation on employee compensation.

Amended by Chapter 109, 2013 General Session

Amended by Chapter 310, 2013 General Session

67-19-12.1. Department of Financial Institutions pay plans.

To allow the state to recruit and retain the highest qualified examiners and regulators to oversee the financial services industry in this state and ensure parity with officials and employees of federal regulatory agencies and entities performing substantially similar jobs, the pay plans for all examiners and supervisors specified in Title 7, Chapter 1, Article 2, Department of Financial Institutions, shall comply with Section 67-19-12, except that the market comparability study of state salary ranges for these positions shall be based on a survey of salary ranges of federal regulatory agencies and organizations responsible for regulating financial institutions chartered and regulated by the commissioner of financial institutions, including the:

- (1) Federal Deposit Insurance Corporation;
- (2) Federal Reserve; and
- (3) National Credit Union Administration.

Enacted by Chapter 338, 2006 General Session

67-19-12.2. Education benefit plan for law enforcement and correctional officers.

(1) As used in this section, "law enforcement officer" has the same meaning as in Section 53-13-103 and "correctional officer" has the same meaning as in Section 53-13-104.

(2) The executive director shall establish a plan authorizing any agency to implement an educational compensation program for law enforcement officers and correctional officers employed by that agency.

(3) The program shall provide that in order for a law enforcement officer or correctional officer to qualify for education benefits for college or university education, the law enforcement officer or correctional officer shall:

(a) provide a certified transcript of grades, demonstrating a grade point average of 3.0 or greater, from an accredited college or university; and

(b) have successfully completed the probationary employment period with the employing agency.

(4) The program shall also provide that the agency may consider a law enforcement officer or correctional officer to receive additional compensation as follows for higher education degrees earned on or after April 30, 2001, in a subject area directly related to the law enforcement officer's or correctional officer's employment with the agency:

(a) 5.5% for an associate's degree;

(b) 5.5% for a bachelor's degree; and

(c) 5.5% for a master's degree.

(5) Expenses incurred by an agency to provide additional compensation under this section may be only from the agency's existing budget.

Amended by Chapter 249, 2010 General Session

67-19-12.3. Peace officer, correctional officer, and public safety dispatch personnel pay plans.

To allow the state to recruit and retain the highest qualified law enforcement officers, correctional officers, and public safety dispatchers, the pay plans for law enforcement officers, as defined under Section 53-13-103, correctional officers, as defined under Section 53-13-104, and public safety dispatchers, as defined under Section 53-6-102, employed by the state shall comply with Section 67-19-12, except that the market comparability of state salary ranges for these positions shall be based on a survey of salary ranges of respectively:

(1) the three largest political subdivision law enforcement agencies in Utah;

(2) the three largest political subdivision entities employing correctional officers in Utah; and

(3) the three largest special service district or other political subdivision entities in Utah employing public safety dispatchers in a similar consolidated operation.

Amended by Chapter 140, 2007 General Session

67-19-12.5. Creation of Flexible Benefit Program -- Rulemaking power granted to establish program.

(1) The department shall establish for calendar year 1990 and thereafter a

Flexible Benefit Program under Section 125 of the Internal Revenue Code of 1986.

(2) The department shall establish accounts for all employees eligible for benefits which meet the nondiscrimination requirements of the Internal Revenue Code of 1986.

(3) (a) Each account established under this section shall include employee paid premiums for health and dental services.

(b) The account may also include, at the option of the employee, out-of-pocket employee medical and dependent care expenses.

(c) Accounts may also include other expenses allowed under the Internal Revenue Code of 1986.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules to implement the program established under this section.

Amended by Chapter 382, 2008 General Session

67-19-12.7. Accumulated annual leave -- Conversion to deferred compensation plan.

(1) The department shall implement a program whereby an employee may, upon termination of employment or retirement, elect to convert any unused annual leave into any of the employee's designated deferred compensation accounts that:

(a) are sponsored by the Utah State Retirement Board; and

(b) are qualified under Section 401(k) or Section 457 of the Internal Revenue Code.

(2) Any annual leave converted under Subsection (1) shall be converted into the employee's deferred compensation account at the employee's pay rate at the time of termination or retirement.

(3) No employee may convert hours of accrued annual leave to the extent that any hours so converted would exceed the maximum amount authorized by the Internal Revenue Code for each calendar year.

Amended by Chapter 139, 2006 General Session

67-19-12.9. Accumulated annual leave -- Annual conversion to deferred compensation plan.

(1) If the Legislature in an annual appropriations act with accompanying intent language specifically authorizes and fully funds the estimated costs of this use, the department shall implement a program that allows an employee, in the approved calendar year, to elect to convert up to 20 hours of annual leave, in whole hour increments not to exceed \$250 in value, into any of the employee's designated deferred compensation accounts that:

(a) are sponsored by the Utah State Retirement Board; and

(b) are qualified under Section 401(k) or Section 457 of the Internal Revenue Code.

(2) Any annual leave converted under Subsection (1) shall be:

(a) converted into the employee's deferred compensation account at the

employee's pay rate at the time of conversion; and

(b) calculated in the last pay period of the leave year as determined by the Division of Finance.

(3) An employee may not convert hours of accrued annual leave to the extent that any hours converted would:

(a) exceed the maximum amount authorized by the Internal Revenue Code for the calendar year; or

(b) cause the employee's balance of accumulated annual leave to drop below the maximum accrual limit provided by rule.

Amended by Chapter 139, 2006 General Session

67-19-13. Examination of payrolls and certification of employee eligibility by the executive director.

(1) The executive director may examine payrolls at any time to determine conformity with this chapter and the regulations.

(2) No new employee shall be hired in a position covered by this chapter, and no employee shall be changed in pay, title or status, nor shall any employee be paid unless certified by the executive director as eligible under the provisions of or regulations promulgated pursuant to this chapter.

Amended by Chapter 139, 2006 General Session

67-19-13.5. Department provides payroll services to executive branch agencies -- Report.

(1) As used in this section:

(a) (i) "Executive branch entity" means a department, division, agency, board, or office within the executive branch of state government that employs a person who is paid through the central payroll system developed by the Division of Finance as of December 31, 2011.

(ii) "Executive branch entity" does not include the Offices of the Attorney General, State Treasurer, State Auditor, Departments of Transportation, Technology Services, Public Safety, or Natural Resources.

(b) (i) "Payroll services" means using the central payroll system as directed by the Division of Finance to:

(A) enter and validate payroll reimbursements, which include reimbursements for mileage, a service award, and other wage types;

(B) calculate, process, and validate a retirement;

(C) enter a leave adjustment; and

(D) certify payroll by ensuring an entry complies with a rule or policy adopted by the department or the Division of Finance.

(ii) "Payroll services" does not mean:

(A) a function related to payroll that is performed by an employee of the Division of Finance;

(B) a function related to payroll that is performed by an executive branch agency on behalf of a person who is not an employee of the executive branch agency;

(C) the entry of time worked by an executive branch agency employee into the central payroll system; or

(D) approval or verification by a supervisor or designee of the entry of time worked.

(2) The department shall provide payroll services to all executive branch entities.

(3) After September 19, 2012, an executive branch entity, other than the department or the Division of Finance, may not create a full-time equivalent position or part-time position, or request an appropriation to fund a full-time equivalent position or part-time position for the purpose of providing payroll services to the entity.

(4) The Department of Transportation, the Department of Technology Services, and the Department of Natural Resources shall report on the inability to transfer payroll services to the department or the progress of transferring payroll services to the department:

(a) to the Government Operations Interim Committee before October 30, 2012; and

(b) to the Infrastructure and General Government Appropriations Subcommittee on or before February 11, 2013.

Amended by Chapter 128, 2013 General Session

Amended by Chapter 278, 2013 General Session

67-19-14. Sick leave -- Definitions -- Unused sick days retirement programs -- Rulemaking.

(1) As used in this section through Section 67-19-14.4:

(a) "Continuing medical and life insurance benefits" means the state provided policy of medical insurance and the state provided portion of a policy of life insurance, each offered at the same:

(i) benefit level and the same proportion of state/member participation in the total premium costs as an active member as defined in Section 49-11-102; and

(ii) coverage level for a member, two person, or family policy as provided to the member at the time of retirement.

(b) "Converted sick leave" means leave that has been converted from unused sick leave in accordance with Section 67-19-14.1 which may be used by an employee in the same manner as:

(i) annual leave;

(ii) sick leave; or

(iii) unused accumulated sick leave after the employee's retirement for the purchase of continuing medical and life insurance benefits under Sections 67-19-14.2, 67-19-14.3, and 67-19-14.4.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the executive director shall make rules:

(a) for the procedures to implement the provisions of this section through Section 67-19-14.4; and

(b) to establish the maximum number of hours of converted sick leave an employee may accrue.

(3) The Division of Finance shall develop and maintain a system of accounting

for employee sick leave and converted sick leave as necessary to implement the provisions of this section through Section 67-19-14.4.

Amended by Chapter 109, 2013 General Session

67-19-14.1. Converted sick leave.

(1) Until January 1, 2014, an employee who has 144 hours of accumulated unused sick leave immediately prior to the beginning of a calendar year, may elect to convert any unused sick leave hours accumulated during that calendar year, in excess of 64 hours, to converted sick leave.

(2) The conversion is made at the beginning of the next calendar year for unused sick leave hours earned during a calendar year under Subsection (1).

(3) Converted sick leave hours that are not used prior to an employee's retirement date shall be used under the:

(a) Unused Sick Leave Retirement Option Program I under Section 67-19-14.2 if earned prior to January 1, 2006, unless the transfer is made under Subsection 67-19-14.4(1)(c); or

(b) Unused Sick Leave Retirement Option Program II under Section 67-19-14.4 if earned on or after January 1, 2006.

Amended by Chapter 277, 2013 General Session

67-19-14.2. Unused Sick Leave Retirement Option Program -- Creation -- Payout upon eligibility for allowance -- Continuing medical and life insurance benefits after retirement.

(1) (a) There is created the "Unused Sick Leave Retirement Option Program I."

(b) An agency may offer the Unused Sick Leave Retirement Option Program I to an employee who is eligible to receive a retirement allowance in accordance with Title 49, Utah State Retirement and Insurance Benefit Act.

(2) The Unused Sick Leave Retirement Option Program I provides that upon becoming eligible to receive a retirement allowance an employee who was employed by the state prior to January 1, 2006:

(a) receives a contribution under Subsection (3) for 25% of the employee's unused accumulated sick leave accrued prior to January 1, 2006, at the employee's rate of pay at the time of retirement; and

(b) may purchase additional continuing medical and life insurance benefits in accordance with Subsection (4).

(3) (a) Subject to federal requirements and limitations, the contribution under Subsection (2)(a) shall be transferred directly to the employee's defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which is sponsored by the Utah State Retirement Board.

(b) If the amount calculated under Subsection (2)(a) exceeds the federal contribution limitations, the employee's unused accumulated sick leave hours representing the excess shall be used for the purchase of continuing medical and life insurance benefits under Subsection (4).

(4) (a) An employee may purchase continuing medical and life insurance

benefits, at the rate of one month's coverage per policy for eight hours of unused sick leave remaining after the contribution of unused sick leave under Subsection (2)(a).

(b) The medical coverage level for member, two person, or family coverage that is provided to the member at the time of retirement is the maximum coverage level available to the member under this program.

(c) The purchase of continuing medical and life insurance benefits at the rate provided under Subsection (4)(a) may be used by the employee to extend coverage:

- (i) until the employee reaches the age of eligibility for Medicare; or
- (ii) if the employee has reached the age of eligibility for Medicare, continuing medical benefits for the employee's spouse may be purchased until the employee's spouse reaches the age of eligibility for Medicare.

(d) An employee and the employee's spouse who are or who later become eligible for Medicare may purchase Medicare supplemental insurance at the rate of one month's coverage for eight hours of the employee's unused sick leave per person.

(5) (a) The continuing medical and life insurance benefits purchased by an employee under Subsection (4):

- (i) may not be suspended or deferred for future use; and
- (ii) continues in effect until exhausted.

(b) An employer participating in the Program I benefits under this section may not provide medical or life insurance benefits to a person who is:

- (i) reemployed after retirement; and
- (ii) receiving benefits under this section.

Amended by Chapter 277, 2013 General Session

67-19-14.3. Continuation of Insurance Benefits Program -- Creation -- Coverage following death in the line of duty.

(1) There is created the "Continuation of Insurance Benefits Program" to provide a continuation of insurance to the surviving spouse and family of any state employee whose death occurs in the line of duty.

(2) The insurance coverage shall be the same coverage as provided under Section 49-20-406.

(3) The program provides that unused accumulated sick leave of a deceased employee may be used for additional medical coverage in the same manner as provided under Section 67-19-14.2 or 67-19-14.4 as applicable.

Amended by Chapter 15, 2005 General Session

Amended by Chapter 114, 2005 General Session

67-19-14.4. Unused Sick Leave Retirement Program II -- Creation -- Remuneration upon eligibility for allowance -- Medical expense account after retirement.

(1) (a) There is created the "Unused Sick Leave Retirement Program II."

(b) An agency shall offer the Unused Sick Leave Retirement Option Program II to an employee who is eligible to receive a retirement allowance in accordance with Title 49, Utah State Retirement and Insurance Benefit Act.

(c) An employee who is participating in the Unused Sick Leave Retirement Program I under Section 67-19-14.2 may make a one-time and irrevocable election to transfer all unused sick leave hours which shall include all converted sick leave hours under Section 67-19-14.1 for use under the Unused Sick Leave Retirement Program II under this section.

(2) (a) The Unused Sick Leave Retirement Program II provides that upon becoming eligible to receive a retirement allowance an employee employed by the state between January 1, 2006, and January 3, 2014, shall receive remuneration for the employee's unused accumulated sick leave and converted sick leave accrued between January 1, 2006, and January 3, 2014, in accordance with this section as follows:

(i) subject to federal requirements and limitations, a contribution at the employee's rate of pay at the time of retirement for 25% of the employee's unused accumulated sick leave and converted sick leave shall be transferred directly to the employee's defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which is sponsored by the Utah State Retirement Board; and

(ii) participation in a benefit plan that provides for reimbursement for medical expenses using money deposited at the employee's rate of pay at the time of retirement from remaining unused accumulated sick leave and converted sick leave balances.

(b) If the amount calculated under Subsection (2)(a)(i) exceeds the federal contribution limitations, the amount representing the excess shall be deposited under Subsection (2)(a)(ii).

(c) An employee's rate of pay at the time of retirement for purposes of Subsection (2)(a)(ii) may not be less than the average rate of pay of state employees who retired in the same retirement system under Title 49, Utah State Retirement and Insurance Benefit Act, during the previous calendar year.

(3) The Utah State Retirement Office shall develop and maintain a program to provide a benefit plan that provides for reimbursement for medical expenses under Subsection (2)(a)(ii) with:

- (a) money deposited under Subsection (2)(a)(ii); and
- (b) accrued earnings.

Amended by Chapter 277, 2013 General Session

67-19-14.5. Organ donor leave.

(1) An employee who serves as a bone marrow donor shall be granted a paid leave of absence of up to seven days that are necessary for the donation and recovery from the donation.

(2) An employee who serves as a donor of a human organ shall be granted a paid leave of absence of up to 30 days that are necessary for the donation and recovery from the donation.

Enacted by Chapter 310, 2002 General Session

67-19-14.6. Annual leave -- Definitions -- Previously accrued hours -- Recognition of liability.

(1) As used in this section:

(a) (i) "Annual leave II" means leave hours an employing agency provides to an employee, beginning on the change date established in Subsection (2), as time off from work for personal use without affecting the employee's pay.

(ii) "Annual leave II" does not include:

(A) legal holidays under Section 63G-1-301;

(B) time off as compensation for actual time worked in excess of an employee's defined work period;

(C) sick leave;

(D) paid or unpaid administrative leave; or

(E) other paid or unpaid leave from work provided by state statute, administrative rule, or by federal law or regulation.

(b) "Change date" means the date established by the Division of Finance under Subsection (2) when annual leave II begins for a state agency.

(2) In accordance with the Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Division of Finance shall establish a date that is no later than January 2, 2016, when a state agency shall offer annual leave II in lieu of annual leave to an employee who is eligible to receive paid leave.

(3) An employing agency shall allow an employee who has an unused balance of accrued annual leave before the change date, to use the annual leave under the same rules that applied to the leave on the change date.

(4) (a) At the time of employee accrual of annual leave II, an employing agency shall set aside the cost of each hour of annual leave II for each eligible employee in an amount determined in accordance with rules made by the Division of Finance.

(b) The rules made under Subsection (4)(a) shall consider:

(i) the employee hourly rate of pay;

(ii) applicable employer paid taxes that would be required if the employee was paid for the annual leave II instead of using it for time off;

(iii) other applicable employer paid benefits; and

(iv) adjustments due to employee hourly rate changes, including the effect on accrued annual leave II balances.

(5) The cost set aside under Subsection (4) shall be deposited by the Division of Finance into the State Employees' Annual Leave Program II Trust Fund created in Section 67-19f-201.

(6) For annual leave hours accrued before the change date, an employing agency shall continue to comply with the Division of Finance requirements for contributions to the termination pool.

(7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(a) the department shall make rules for the accrual and use of annual leave II provided under this section; and

(b) the Division of Finance shall make rules for the set aside provisions under Subsections (4) and (5).

Enacted by Chapter 437, 2014 General Session

67-19-15. Career service -- Exempt positions -- Schedules for civil service

positions -- Coverage of career service provisions.

(1) Except as otherwise provided by law or by rules and regulations established for federally aided programs, the following positions are exempt from the career service provisions of this chapter and are designated under the following schedules:

(a) schedule AA includes the governor, members of the Legislature, and all other elected state officers;

(b) schedule AB includes appointed executives and board or commission executives enumerated in Section 67-22-2;

(c) schedule AC includes all employees and officers in:

(i) the office and at the residence of the governor;

(ii) the Utah Science Technology and Research Initiative (USTAR);

(iii) the Public Lands Policy Coordinating Council;

(iv) the Office of the State Auditor; and

(v) the Office of the State Treasurer;

(d) schedule AD includes employees who:

(i) are in a confidential relationship to an agency head or commissioner; and

(ii) report directly to, and are supervised by, a department head, commissioner, or deputy director of an agency or its equivalent;

(e) schedule AG includes employees in the Office of the Attorney General who are under their own career service pay plan under Sections 67-5-7 through 67-5-13;

(f) schedule AH includes:

(i) teaching staff of all state institutions; and

(ii) employees of the Utah Schools for the Deaf and the Blind who are:

(A) educational interpreters as classified by the department; or

(B) educators as defined by Section 53A-25b-102;

(g) schedule AN includes employees of the Legislature;

(h) schedule AO includes employees of the judiciary;

(i) schedule AP includes all judges in the judiciary;

(j) schedule AQ includes:

(i) members of state and local boards and councils appointed by the governor and governing bodies of agencies;

(ii) other local officials serving in an ex officio capacity; and

(iii) officers, faculty, and other employees of state universities and other state institutions of higher education;

(k) schedule AR includes employees in positions that involve responsibility:

(i) for determining policy;

(ii) for determining the way in which a policy is carried out; or

(iii) of a type not appropriate for career service, as determined by the agency head with the concurrence of the executive director;

(l) schedule AS includes any other employee:

(i) whose appointment is required by statute to be career service exempt;

(ii) whose agency is not subject to this chapter; or

(iii) whose agency has authority to make rules regarding the performance, compensation, and bonuses for its employees;

(m) schedule AT includes employees of the Department of Technology Services, designated as executive/professional positions by the executive director of

the Department of Technology Services with the concurrence of the executive director;

(n) schedule AU includes patients and inmates employed in state institutions;

(o) employees of the Department of Workforce Services, designated as schedule AW:

(i) who are temporary employees that are federally funded and are required to work under federally qualified merit principles as certified by the director; or

(ii) for whom substantially all of their work is repetitive, measurable, or transaction based, and who voluntarily apply for and are accepted by the Department of Workforce Services to work in a pay for performance program designed by the Department of Workforce Services with the concurrence of the executive director; and

(p) for employees in positions that are temporary, seasonal, time limited, funding limited, or variable hour in nature, under schedule codes and parameters established by the department by administrative rule.

(2) The civil service shall consist of two schedules as follows:

(a) (i) Schedule A is the schedule consisting of positions under Subsection (1).

(ii) Removal from any appointive position under schedule A, unless otherwise regulated by statute, is at the pleasure of the appointing officers without regard to tenure.

(b) Schedule B is the competitive career service schedule, consisting of:

(i) all positions filled through competitive selection procedures as defined by the executive director; or

(ii) positions filled through a department approved on-the-job examination intended to appoint a qualified person with a disability or a veteran as defined in Section 71-10-1.

(3) (a) The executive director, after consultation with the heads of concerned executive branch departments and agencies and with the approval of the governor, shall allocate positions to the appropriate schedules under this section.

(b) Agency heads shall make requests and obtain approval from the executive director before changing the schedule assignment and tenure rights of any position.

(c) Unless the executive director's decision is reversed by the governor, when the executive director denies an agency's request, the executive director's decision is final.

(4) (a) Compensation for employees of the Legislature shall be established by the directors of the legislative offices in accordance with Section 36-12-7.

(b) Compensation for employees of the judiciary shall be established by the state court administrator in accordance with Section 78A-2-107.

(c) Compensation for officers, faculty, and other employees of state universities and institutions of higher education shall be established as provided in Title 53B, Chapter 1, Governance, Powers, Rights, and Responsibilities, and Title 53B, Chapter 2, Institutions of Higher Education.

(d) Unless otherwise provided by law, compensation for all other schedule A employees shall be established by their appointing authorities, within ranges approved by, and after consultation with the executive director of the Department of Human Resource Management.

(5) An employee who is in a position designated schedule AC and who holds career service status on June 30, 2010, shall retain the career service status if the

employee:

- (a) remains in the position that the employee is in on June 30, 2010; and
- (b) does not elect to convert to career service exempt status in accordance with a rule made by the department.

Amended by Chapter 154, 2014 General Session

67-19-15.1. Implementation of exempt status for Schedule AD and AR employees.

- (1) As used in this section, "appointee" means:
 - (a) a deputy director;
 - (b) a division director;
 - (c) any assistant directors and administrative assistants who report directly to a department head, deputy director, or their equivalent; and
 - (d) any other person whose appointment is required by law to be approved by the governor.
- (2) After the effective date of this chapter, any new appointee is a merit exempt employee.
- (3) Notwithstanding the requirements of this chapter, any appointee who is currently a nonexempt employee does not lose that nonexempt status because of this chapter.
- (4) The Department of Human Resource Management shall develop financial and other incentives to encourage appointees who are nonexempt to voluntarily convert to merit exempt status.

Amended by Chapter 139, 2006 General Session

67-19-15.6. Longevity salary increases.

- (1) Except for those employees in schedule AB, as provided under Section 67-19-15, and employees described in Subsection 67-19-15(1)(p), an employee shall receive an increase in salary of 2.75% if that employee:
 - (a) holds a position under schedule A or B as provided under Section 67-19-15;
 - (b) has reached the maximum of the salary range in the position classification;
 - (c) has been employed with the state for eight years; and
 - (d) is rated eligible in job performance under guidelines established by the executive director.
- (2) Any employee who meets the criteria under Subsection (1) is entitled to the same increase in salary for each additional three years of employment if the employee maintains the eligibility standards established by the department.

Amended by Chapter 109, 2013 General Session

67-19-15.7. Promotion -- Reclassification -- Market adjustment.

- (1) (a) If an employee is promoted or the employee's position is reclassified to a higher salary range maximum, the agency shall place the employee within the new range of the position.

- (b) An agency may not set an employee's salary:
 - (i) higher than the maximum in the new salary range; and
 - (ii) lower than the minimum in the new salary range of the position.
- (c) Except for an employee described in Subsection 67-19-15(1)(p), the agency shall grant a salary increase of at least 5% to an employee who is promoted.
- (2) An agency shall adjust the salary range for an employee whose salary range is approved by the Legislature for a market comparability adjustment consistent with Subsection 67-19-12(4)(c)(v):
 - (a) at the beginning of the next fiscal year; and
 - (b) consistent with appropriations made by the Legislature.
- (3) Department-initiated revisions in the state classification system that result in consolidation or reduction of class titles or broadening of pay ranges:
 - (a) may not be regarded as a reclassification of the position or promotion of the employee; and
 - (b) are exempt from the provisions of Subsection (1).

Amended by Chapter 109, 2013 General Session

67-19-16. Appointments to Schedule B positions -- Examinations -- Hiring lists -- Probationary service -- Dismissal.

- (1) Each appointment to a position under Schedule B shall be made from hiring lists of applicants who have been selected by competitive procedures as defined by the executive director.
- (2) The executive director shall publicly announce information regarding career service positions:
 - (a) for periods of time to be determined by the executive director; and
 - (b) in a manner designed to attract the highest number of qualified applicants.
- (3) The executive director shall make rules establishing standards for the development, approval, and implementation of examining processes, including establishing a department approved on the job examination to appoint a qualified person with a disability.
- (4) Applicants for employment to Schedule B positions shall be eligible for appointment based upon rules established by the executive director.
- (5) (a) The agency head shall make appointments to fill vacancies from hiring lists for probationary periods as defined by rule.
 - (b) The executive director shall make rules establishing probationary periods.
- (6) A person serving a probationary period may not use the grievance procedures provided in this chapter and in Chapter 19a, Grievance Procedures, and may be dismissed at any time by the appointing officer without hearing or appeal.
- (7) Career service status shall be granted upon the successful completion of the probationary period.

Amended by Chapter 103, 2010 General Session
Amended by Chapter 249, 2010 General Session

67-19-18. Dismissals and demotions -- Grounds -- Disciplinary action --

Procedure -- Reductions in force.

- (1) A career service employee may be dismissed or demoted:
 - (a) to advance the good of the public service; or
 - (b) for just causes, including inefficiency, incompetency, failure to maintain skills or adequate performance levels, insubordination, disloyalty to the orders of a superior, misfeasance, malfeasance, or nonfeasance in office.
- (2) An employee may not be dismissed because of race, sex, age, disability, national origin, religion, political affiliation, or other nonmerit factor including the exercise of rights under this chapter.
- (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the executive director shall establish rules governing the procedural and documentary requirements of disciplinary dismissals and demotions.
- (4) If an agency head finds that a career service employee is charged with aggravated misconduct or that retention of a career service employee would endanger the peace and safety of others or pose a grave threat to the public interest, the employee may be suspended pending the administrative appeal to the department head as provided in Subsection (5).
- (5)
 - (a) A career service employee may not be demoted or dismissed unless the department head or designated representative has complied with this subsection.
 - (b) The department head or designated representative notifies the employee in writing of the reasons for the dismissal or demotion.
 - (c) The employee has no less than five working days to reply and have the reply considered by the department head.
 - (d) The employee has an opportunity to be heard by the department head or designated representative.
 - (e) Following the hearing, the employee may be dismissed or demoted if the department head finds adequate cause or reason.
- (6)
 - (a) Reductions in force required by inadequate funds, change of workload, or lack of work are governed by retention points established by the executive director.
 - (b) Under those circumstances:
 - (i) The agency head shall designate the category of work to be eliminated, subject to review by the executive director.
 - (ii) Temporary and probationary employees shall be separated before any career service employee.
 - (iii)
 - (A) When more than one career service employee is affected, the employees shall be separated in the order of their retention points, the employee with the lowest points to be discharged first.
 - (B) Retention points for each career service employee shall be computed according to rules established by the executive director, allowing appropriate consideration for proficiency and seniority in state government, including any active duty military service fulfilled subsequent to original state appointment.
 - (c)
 - (i) A career service employee who is separated in a reduction in force under this section shall be given preferential consideration when applying for a career service position.
 - (ii) Preferential consideration under Subsection (6)(c)(i) applies only until the former career service employee accepts a career service position.

(iii) The executive director shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, concerning the manner of granting preferential consideration under Subsection (6)(c)(i).

(d) (i) An employee separated due to a reduction in force may appeal to the department head for an administrative review.

(ii) The notice of appeal must be submitted within 20 working days after the employee's receipt of written notification of separation.

(iii) The employee may appeal the decision of the department head according to the grievance and appeals procedure of this chapter and Chapter 19a, Grievance Procedures.

Amended by Chapter 249, 2010 General Session

67-19-19. Political activity of employees -- Rules and regulations -- Highway patrol -- Hatch Act.

Except as otherwise provided by law or by rules promulgated under this section for federally aided programs, the following provisions apply with regard to political activity of career service employees in all grades and positions:

(1) Career service employees may voluntarily participate in political activity subject to the following provisions:

(a) if any career service employee is elected to any partisan or full-time nonpartisan political office, that employee shall be granted a leave of absence without pay for times when monetary compensation is received for service in political office;

(b) no officer or employee in career service may engage in any political activity during the hours of employment, nor may any person solicit political contributions from employees of the executive branch during hours of employment for political purposes; and

(c) partisan political activity may not be a basis for employment, promotion, demotion, or dismissal, except that the executive director shall adopt rules providing for the discipline or punishment of a state officer or employee who violates any provision of this section.

(2) (a) Notwithstanding any other provision of this section, no member of the Utah Highway Patrol may use his official authority or influence for the purpose of interfering with an election or affecting the results of an election.

(b) No person may induce or attempt to induce any member of the Utah Highway Patrol to participate in any activity prohibited by this Subsection (2).

(3) Nothing contained in this section may be construed to:

(a) preclude voluntary contributions by an employee to the party or candidate of the officer's or employee's choice; or

(b) permit partisan political activity by any employee who is prevented or restricted from engaging in the political activity by the provisions of the federal Hatch Act.

Amended by Chapter 139, 2006 General Session

67-19-26. Severability of provisions -- Compliance with requirements for

federally aided programs.

(1) If any provision of this chapter or of any regulation or order issued thereunder or the application of any provision of this chapter to any person or circumstance is held invalid, the remainder of this chapter and the application of provision of this chapter or regulation or orders issued under it to persons or circumstances other than those to which it is held invalid shall still be regarded as having the force and effect of law.

(2) If any part of this chapter is found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, the conflicting part of this chapter shall be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such findings shall not affect the operation of the remainder of this chapter in its application to the agencies concerned.

(3) Notwithstanding any provisions in this chapter to the contrary, no regulation shall be adopted which would deprive the state or any of its departments or institutions of federal grants or other forms of financial assistance, and the rules and regulations promulgated hereunder shall include standards, provisions, terms, and conditions for personnel engaged in the administration of federally aided programs, which shall, in all respects, comply with the necessary requirements for a qualified human resource system under the standards applicable to personnel engaged in the administration of federally aided programs.

Amended by Chapter 181, 2005 General Session

67-19-27. Leave of absence with pay for employees with a disability who are covered under other civil service systems.

(1) As used in this section:

(a) "Eligible officer" means a person who qualifies for a benefit under this section.

(b) (i) "Law enforcement officer" means a sworn and certified peace officer who is an employee of a law enforcement agency that is part of or administered by the state, and whose primary and principal duties consist of the prevention and detection of crime and the enforcement of criminal statutes of this state.

(ii) "Law enforcement officer" specifically includes the following:

(A) the commissioner of public safety and any member of the Department of Public Safety certified as a peace officer;

(B) all persons specified in Sections 23-20-1.5 and 79-4-501;

(C) investigators for the Motor Vehicle Enforcement Division;

(D) special agents or investigators employed by the attorney general;

(E) employees of the Department of Natural Resources designated as peace officers by law;

(F) the executive director of the Department of Corrections and any correctional enforcement or investigative officer designated by the executive director and approved by the commissioner of public safety and certified by the division; and

(G) correctional enforcement, investigative, or adult probation and parole officers employed by the Department of Corrections serving on or before July 1, 1993.

(c) "State correctional officer" means a correctional officer as defined in Section

53-13-104 who is employed by the Department of Corrections.

(2) (a) A law enforcement officer or state correctional officer who is injured in the course of employment shall be given a leave of absence with 100% of the officer's regular monthly salary and benefits during the period the employee has a temporary disability.

(b) The benefit provided under Subsection (2)(a):

(i) shall be offset as provided under Subsection (4); and

(ii) may not exceed 100% of the officer's regular monthly salary and benefits, including all offsets required under Subsection (4).

(3) (a) A law enforcement officer or state correctional officer who has a total disability as defined in Section 49-21-102, shall be given a leave of absence with 100% of the officer's regular monthly salary and benefits until the officer is eligible for an unreduced retirement under Title 49, Utah State Retirement and Insurance Benefit Act, or reaches the retirement age of 62 years, whichever occurs first, if:

(i) the disability is a result of an injury sustained while in the lawful discharge of the officer's duties; and

(ii) the injury is the result of:

(A) a criminal act upon the officer; or

(B) an aircraft, vehicle, or vessel accident and the officer was not negligent in causing the accident.

(b) The benefit provided under Subsection (3)(a):

(i) shall be offset as provided under Subsection (4); and

(ii) may not exceed 100% of the officer's regular monthly salary and benefits, including all offsets required under Subsection (4).

(4) (a) The agency shall reduce or require the reimbursement of the monthly benefit provided under this section by any amount received by, or payable to, the eligible officer for the same period of time during which the eligible officer is entitled to receive a monthly disability benefit under this section.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules establishing policies and procedures for the reductions required under Subsection (4)(a).

Amended by Chapter 159, 2012 General Session

67-19-29. Violation a misdemeanor.

Any person who knowingly violates a provision of this chapter is guilty of a class A misdemeanor.

Enacted by Chapter 139, 1979 General Session

67-19-30. Grievance resolution -- Jurisdiction.

(1) Employees shall comply with the procedural and jurisdictional requirements of this section, Title 63G, Chapter 4, Administrative Procedures Act, and Chapter 19a, Grievance Procedures, in seeking resolution of grievances.

(2) All grievances based upon a claim or charge of injustice or oppression, including dismissal from employment, resulting from an act, occurrence, commission, or

condition shall be governed by Chapter 19a, Grievance Procedures, and Title 63G, Chapter 4, Administrative Procedures Act.

(3) All grievances involving classification shall be governed by Section 67-19-31 and are designated as informal adjudicative proceedings as defined by Title 63G, Chapter 4, Administrative Procedures Act.

(4) All grievances by applicants for positions in state government involving an alleged discriminatory or prohibited employment practice shall be governed by Section 67-19-32 and Title 63G, Chapter 4, Administrative Procedures Act.

(5) A "grievance" under this chapter is a request for agency action for purposes of Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 249, 2010 General Session

67-19-31. Position classification grievances -- Scope -- Procedure.

(1) (a) For the purpose of position classification grievances, the process that culminates in assigning a career service position to an appropriate class specification is a matter of position classification and may be grieved.

(b) The process that culminates in assigning a salary range to the class specification is not a position classification and may not be grieved as a classification grievance.

(2) (a) Upon receipt of a position classification grievance, the executive director shall refer the grievance to a classification panel of three or more impartial persons trained in state classification procedures.

(b) The classification panel shall determine whether or not the classification assignment for career service positions was appropriate by applying the statutes, rules, and procedures adopted by the department that were in effect at the time of the classification change.

(c) The classification panel may:

- (i) obtain access to previous audits, classification decisions, and reports;
- (ii) request new or additional audits by human resource analysts; and
- (iii) consider new or additional information.

(d) The classification panel may sustain or modify the original decision and, if applicable, recommend a new classification.

(e) The classification panel shall report its recommendation to the executive director, who shall make the classification decision and notify the grievant.

(3) (a) Either party may appeal the executive director's decision to an impartial hearing officer trained in state classification procedures selected through a public bid process by a panel consisting of the following members:

- (i) the executive director of the Department of Human Resource Management;
- (ii) two department executive directors;
- (iii) a private sector human resources executive appointed by the governor; and
- (iv) a representative of the Utah Public Employees Association.

(b) The successful bid shall serve under contract for no more than three years. At the end of that time, the Department of Human Resource Management shall reissue the bid.

(c) The hearing officer shall review the classification and make the final decision.

The final decision is subject to judicial review pursuant to the provisions of Section 63G-4-402.

Amended by Chapter 382, 2008 General Session

67-19-32. Discriminatory/prohibited employment practices grievances -- Procedures.

(1) An applicant for a position in state government, a probationary employee, career service employee, or an exempt employee who alleges a discriminatory or prohibited employment practice as defined in Section 34A-5-106 may submit a written grievance to the department head where the alleged unlawful act occurred.

(2) Within 10 working days after a written grievance is submitted under Subsection (1), the department head shall issue a written response to the grievance stating his decision and the reasons for the decision.

(3) If the department head does not issue a decision within 10 days, or if the grievant is dissatisfied with the decision, the grievant may submit a complaint to the Division of Antidiscrimination and Labor, pursuant to Section 34A-5-107.

Amended by Chapter 375, 1997 General Session

67-19-33. Controlled substances and alcohol use prohibited.

An employee may not:

(1) manufacture, dispense, possess, use, distribute, or be under the influence of a controlled substance or alcohol during work hours or on state property except where legally permissible;

(2) manufacture, dispense, possess, use, or distribute a controlled substance or alcohol if the activity prevents:

(a) state agencies from receiving federal grants or performing under federal contracts of \$25,000 or more; or

(b) the employee to perform his services or work for state government effectively as regulated by the rules of the executive director in accordance with Section 67-19-34; or

(3) refuse to submit to a drug or alcohol test under Section 67-19-36.

Amended by Chapter 139, 2006 General Session

67-19-34. Rulemaking power to executive director.

In accordance with this chapter and Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the executive director shall make rules regulating:

(1) disciplinary actions for employees subject to discipline under Section 67-19-37;

(2) the testing of employees for the use of controlled substances or alcohol as provided in Section 67-19-36;

(3) the confidentiality of drug testing and test results performed under Section 67-19-36 in accordance with Title 63G, Chapter 2, Government Records Access and Management Act; and

(4) minimum blood levels of alcohol or drug content for work effectiveness of an employee.

Amended by Chapter 382, 2008 General Session

67-19-35. Reporting of convictions under federal and state drug laws.

(1) An employee who is convicted under a federal or state criminal statute regulating the manufacture, distribution, dispensation, possession, or use of a controlled substance shall report the conviction to the director of his agency within five calendar days after the date of conviction.

(2) Upon notification either under Subsection (1) or otherwise, the director of the agency shall notify the federal agency for which a contract is being performed within 10 days after receiving notice.

Enacted by Chapter 280, 1990 General Session

67-19-36. Drug testing of state employees.

(1) Except as provided in Subsection (2), when there is reasonable suspicion that an employee is using a controlled substance or alcohol unlawfully during work hours, an employee may be required to submit to medically accepted testing procedures for a determination of whether the employee is using a controlled substance or alcohol in violation of this part.

(2) In highly sensitive positions, as identified in department class specifications, random drug testing of employees may be conducted by an agency in accordance with the rules of the executive director.

(3) All drug or alcohol testing shall be:

(a) conducted by a federally certified and licensed physician, a federally certified and licensed medical clinic, or testing facility federally certified and licensed to conduct medically accepted drug testing;

(b) conducted in accordance with the rules of the executive director made under Section 67-19-34; and

(c) kept confidential in accordance with the rules of the executive director made in accordance with Section 67-19-34.

(4) A physician, medical clinic, or testing facility may not be held liable in any civil action brought by a party for:

(a) performing or failing to perform a test under this section;

(b) issuing or failing to issue a test result under this section; or

(c) acting or omitting to act in any other way in good faith under this section.

Amended by Chapter 139, 2006 General Session

67-19-37. Discipline of employees.

An employee shall be subject to the rules of discipline of the executive director made in accordance with Section 67-19-34, if the employee:

(1) refuses to submit to testing procedures provided in Section 67-19-36;

(2) refuses to complete a drug rehabilitation program in accordance with

Subsection 67-19-38(3);

(3) is convicted under a federal or state criminal statute regulating the manufacture, distribution, dispensation, possession, or use of a controlled substance; or

(4) manufactures, dispenses, possesses, uses, or distributes a controlled substance in violation of state or federal law during work hours or on state property.

Amended by Chapter 139, 2006 General Session

67-19-38. Violations and penalties.

In addition to other criminal penalties provided by law, an employee who:

(1) fails to notify the employee's director under Section 67-19-35 is subject to disciplinary proceedings as established by the executive director by rule in accordance with Section 67-19-34;

(2) refuses to submit to testing procedures provided for in Section 67-19-36, may be suspended immediately without pay pending further disciplinary action as set forth in the rules of the executive director in accordance with Section 67-19-34; or

(3) tests positive for the presence of unlawfully used controlled substances or alcohol may be required, as part of the employee's disciplinary treatment, to complete a drug rehabilitation program at the employee's expense within 60 days after receiving the positive test results or be subject to further disciplinary procedures established by rule of the executive director in accordance with Section 67-19-34.

Amended by Chapter 139, 2006 General Session

67-19-39. Exemptions.

Peace officers, as defined under Title 53, Chapter 13, Peace Officer Classifications, acting in their official capacity as peace officers in undercover roles and assignments, are exempt from the provisions of this act.

Amended by Chapter 185, 2002 General Session

67-19-42. Employee cost disclosure.

The Division of Finance shall, at least annually, plainly disclose to all state employees the costs of compensation and benefits that are paid by the state in dollar figures.

Enacted by Chapter 130, 2004 General Session

67-19-43. State employee matching supplemental defined contribution benefit.

(1) As used in this section, "qualifying employee" means an employee who is:

(a) in a position that is:

(i) receiving retirement benefits under Title 49, Utah State Retirement and Insurance Benefit Act; and

(ii) accruing paid leave benefits that can be used in the current and future

calendar years; and

(b) not an employee who is reemployed as defined in Section 49-11-102.

(2) Subject to the requirements of Subsection (3) and beginning on or after January 4, 2014, an employer shall make a biweekly matching contribution to every qualifying employee's defined contribution plan qualified under Section 401(k) of the Internal Revenue Code, subject to federal requirements and limitations, which is sponsored by the Utah State Retirement Board.

(3) (a) In accordance with the requirements of this Subsection (3), each qualifying employee shall be eligible to receive the same dollar amount for the contribution under Subsection (2).

(b) A qualifying employee:

(i) shall receive the contribution amount determined under Subsection (3)(c) if the qualifying employee makes a voluntary personal contribution to the defined contribution plan account described in Subsection (2) in an amount equal to or greater than the employer's contribution amount determined in Subsection (3)(c);

(ii) shall receive a partial contribution amount that is equal to the qualifying employee's personal contribution amount if the employee makes a voluntary personal contribution to the defined contribution plan account described in Subsection (2) in an amount less than the employer's contribution amount determined in Subsection (3)(c); or

(iii) may not receive a contribution under Subsection (2) if the qualifying employee does not make a voluntary personal contribution to the defined contribution plan account described in Subsection (2).

(c) (i) Subject to the maximum limit under Subsection (3)(c)(iii), the Legislature shall annually determine the contribution amount that an employer shall provide to each qualifying employee under Subsection (2).

(ii) The department shall make recommendations annually to the Legislature on the contribution amount required under Subsection (2), in consultation with the Governor's Office of Management and Budget and the Division of Finance.

(iii) The biweekly matching contribution amount required under Subsection (2) may not exceed \$26 for each qualifying employee.

(4) A qualifying employee is eligible to receive the biweekly contribution under this section for any pay period in which the employee is in a paid status or other status protected by federal or state law.

(5) The employer and employee contributions made under this section vest immediately upon deposit and can be withdrawn by the employee at any time, subject to Internal Revenue Code regulations on the withdrawals.

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the executive director shall make rules establishing procedures to implement the provisions of this section.

Amended by Chapter 15, 2014 General Session